

(2014) 07 MAD CK 0114
In the Madras High Court
Case No : Writ Petition No. 275 of 2010

The Management of Coimbatore District Central Co-operative
Bank Ltd.

APPELLANT

Vs

K. Kovindasamy

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 41(2)

Citation : (2014) 07 MAD CK 0114

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Judgement

R. Sudhakar, J.—When the matter was taken up for hearing there is no representation on behalf of the petitioner and the respondents. Hence, this Court is constrained to peruse the affidavit, counter affidavit, and all other relevant documents and pass the following order.

2. The General Manager of the Co-operative Bank has filed this writ petition challenging the order dated 24.11.2008 passed in T.N.S.E.No.4 of 2001 by the second respondent, namely the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947.

3. The first respondent was employed under the petitioner/Bank from 24.2.1984 to 31.10.1999 as a Manager in Annur Branch. A show cause notice was issued on 8.12.1998, on charges of dereliction in duty and causing loss to a tune of Rs.5.30 Lakhs to the petitioner/bank. The first respondent submitted his explanation on 1.3.1999. Thereafter, the first respondent was placed under suspension with effect from 14.5.1999. The charges of manipulation of ledgers and misappropriation were also levelled against the first respondent. In the meanwhile, the first respondent was permitted to retire from service on attaining the age of superannuation on 30.10.1999, pending enquiry and suspension. Domestic enquiry was conducted and the charges were found to be proved. A

second show cause notice was issued to the first respondent on 1.2.2001. The first respondent submitted his explanation on 15.3.2001. The said explanation was not found satisfactory to the petitioner and, by order dated 30.6.2001, the first respondent was found guilty of the all the charges levelled against him and dismissed from service.

4. Aggrieved by the order passed by the petitioner, the first respondent preferred an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the second respondent. The second respondent, by order dated 5.10.2002, dismissed the appeal holding that since the first respondent was permitted to retire from service on attaining the age of superannuation on 30.10.1999, pending enquiry and suspension, there is no employer employee relationship between the petitioner and the first respondent.

5. Assailing the said order passed by the second respondent, the first respondent preferred a writ petition in W.P.No.4846 of 2004, which was dismissed by this Court on 3.3.2004. However, the appeal filed against the said order came to be allowed by a Division Bench of this Court by order dated 31.7.2008 made in W.A.No.1517 of 2006, holding that the second respondent has the jurisdiction to decide the matter on merits. Consequently, the second respondent, namely the Appellate Authority under the Tamil Nadu Shops and Establishment Act, 1947, decided the appeal filed by the first respondent on merits and passed the impugned order dated 24.11.2008 allowing the appeal. Against the said order passed by the second respondent, the petitioner/Bank has filed this writ petition for the relief stated supra.

6. From the various grounds raised by the petitioner, I find that the two probable grounds are grounds (c) and (d) and they are extracted hereunder for better clarity:

c. The 2nd respondent had not at all considered that there is a domestic enquiry and the same was done in accordance with law and the charges were grave in nature and which were proved beyond all reasonableness, the 1st respondent had not even chosen to challenge the same before the 2nd respondent. Hence the order of the 2nd respondent in allowing the TNSE Appeal is totally unjust and not maintainable.

d. The 2nd respondent had given two contradictory findings on answering the two issues before him. The 2nd respondent had come to a conclusion that even though the order of dismissal is passed with retrospective effect it comes to operation only on the date of dismissal and hence the 1st respondent is entitled to the reliefs under section 41 of the Tamil Nadu Shops and Establishments Act. Then the 2nd respondent ought to have found that there exists valid right of the petitioner to dismiss the 1st respondent based on the charges leveled against him before his retirement.

7. Before adverting to the merits of the case, it would be appropriate to refer to Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, which reads

as under:

Section 41. Notice of dismissal.-

(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed.

8. A reading of the above said provision makes it clear that the decision of the second respondent herein, who is the Appellate Authority under the Tamil Nadu Shops and Establishment Act, 1947, is final and the same is binding on both sides. It is not the case of the petitioner/bank that the Appellate Authority has not looked into the oral and documentary evidence. A perusal of the order impugned in this writ petition shows that the Appellate Authority considered each charge with reference to the oral and documentary evidence let in by both sides and on proper appreciation of the materials, arrived at a specific conclusion.

9. Under Article 226 of the Constitution of India, this Court cannot re-appreciate the evidence and come to its own conclusion. The Court has to consider whether the conclusion reached by the Appellate Authority was justifiable on the evidence placed before it and whether the requirement of the elementary principles of natural justice is followed. In the case on hand, there is no pleading to the effect that the impugned proceedings are arbitrary, mala fide or actuated by bias. There is no allegation of procedural irregularity or non application of mind. The two grounds, referred to above, are general in nature and do not disclose as to how the order of the Appellate Authority is perverse, warranting interference by this Court.

10. In ground (e), the petitioner/bank has stated that the findings rendered by the Appellate Authority are contradictory. Barring such vague and inchoate pleadings, the petitioner/bank has not specifically stated as to what are the contradictory findings in the order passed by the Appellate Authority. Based on such inchoate pleadings, this Court cannot interfere with the order passed by the Appellate Authority, whose decision is final and binding on both the parties.

For the foregoing reasons, this writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2010 is closed.